

MINUTES  
MALIBU CITY COUNCIL  
REGULAR MEETING  
DECEMBER 8, 2003  
COUNCIL CHAMBERS  
6:30 P.M.

**CALL TO ORDER**

Mayor Kearsley called the meeting to order at 6:30 p.m.

**ROLL CALL**

The following persons were recorded in attendance by the Recording Secretary:

PRESENT: Mayor Ken Kearsley, Mayor Pro Tem Sharon Barovsky, Councilmembers Joan House, Jeffrey Jennings and Andrew Stern.

ALSO PRESENT: Katie Lichtig, City Manager; Christi Hogin, City Attorney; Vic Peterson, Environmental and Community Development Director / Building Official; Mike Teruya, Planning Manager; Thomas Gorham, Senior Planner; Yugal Lall, Public Works Director; and Lisa Pope, City Clerk

**FLAG SALUTE**

Norm Haynie led the Pledge of Allegiance.

**CLOSED SESSION REPORT**

**Public Comment on Closed Session Items**

None.

City Attorney Hogin reported that the Council met in Closed Session at 5:30 p.m. to discuss the following items:

**Existing litigation per Government Code Section 54956.9 (a):**

1. City of Arcadia, et al. v. Regional Water Quality Control Board, et al.  
Los Angeles County Superior Court Case Nos. BS080807, BS080548, SO80753, BS080758, BS080791
2. City of Malibu v. California Coastal Commission (Streisand Center Coastal Permit)  
Los Angeles County Superior Court Case No. BC230410
3. City of Malibu v. California Coastal Commission / TLC / Liebig (Referendum)  
Los Angeles County Superior Court Case No. SS011355
4. City of Malibu v. California Coastal Commission (AB988 / LCP)  
Los Angeles County Superior Court Case No. SC074641  
Related cases (city named as a party in interest):
  - a. Rick Appel v. California Coastal Commission

- Case No. SC074658
  - b. Ralph Herzig v. California Coastal Commission  
Case No. SS011382
  - c. Land Use Preservation v. California Coastal Commission  
Case No. SS011388
  - d. Riverview Farm Associates v. California Coastal Commission  
Case No. SS011383
  - e. Brian Sweeney v. California Coastal Commission  
Case No. SS011387
  - f. Trancas-PCH v. California Coastal Commission  
Case No. SC074640
  - g. Tuna Ridge v. California Coastal Commission  
Case No. SC011381
  - h. Land Use Preservation Defense Fund v. California Coastal Commission  
Los Angeles County Superior Court Case No. SS011388
- 5. City of Malibu, et al. v. County of Ventura, et al. (Ahmanson Ranch)  
Ventura County Superior Court Case No. CIV 216938
- 6. Colony Beach Preservation Association v. California Coastal Commission  
Los Angeles County Superior Court Case No. BS083683
- 7. Malibu CAN v. City of Malibu (MBC Development Agreement)  
Los Angeles County Superior Court Case No. BS083683
- 8. Malibu Township Council v. City of Malibu II (28-car garage)  
Los Angeles County Superior Court Case No. BS079965
- 9. Marine Forest Society v. California Coastal Commission Case No. 00AS00567 (Amicus)
- 10. Rubens v. City of Malibu  
Los Angeles County Superior Court Case No. SC060331
- 11. Sierra Club v. City of Malibu (Forge Lodge)  
Los Angeles County Superior Court Case No. BS083573
- 12. Silver v. City of Malibu  
Los Angeles County Superior Court Case No. BS081960
- 13. Sprint v. City of Malibu et al  
United States District Court Case No. SACV02660 DOC (MLGx)
- 14. Sweeney et al v. City of Malibu  
Los Angeles County Superior Court Case No. SS011602
- 15. Taxpayers for Livable Communities; Jay Liebig II v. City of Malibu  
Los Angeles County Superior Court Case No. BS0735585
- 16. Taxpayers for Livable Communities, Povah, et al. v. City of Malibu  
Los Angeles County Superior Court Case No. BS072794
- 17. Trancas Property Owners Association v. City of Malibu  
Los Angeles County Superior Court Case No. BS084112
- 18. United States of America ex rel. Darian v. Accent Builders inc. et al.  
United States District Court Case No. CV00-10255-FMC(JWJx)
- 19. Visher v. City of Malibu  
Los Angeles County Superior Court Case No. SC078703

**Conference With Legal Counsel – Anticipated Litigation pursuant to Government Code Section 54956.9(b):**

20. Number of Cases: 2

City Attorney Hogin reported that the Council discussed several but not all items listed on the Closed Session agenda and took no reportable action.

APPROVAL OF AGENDA

Councilmember Jennings indicated that the appellants had requested Item Nos. 4.A. and 4.B. be consolidated.

MOTION Councilmember Jennings moved and Councilmember House seconded a motion to approve the agenda with Item Nos. 4.A. and 4.B. heard concurrently. The motion carried unanimously.

REPORT ON POSTING OF AGENDA

City Clerk Pope reported that the agenda for the meeting was posted on November 26, 2003, with the amended agenda posted on December 5, 2003.

ITEM 1 CEREMONIAL/PRESENTATIONS

A. Presentation by Santa's Helpers regarding City-sponsored and Kiwanis-sponsored "Breakfast with Santa" event, December 13, 2003.

Theresa Odello, City of Malibu Parks and Recreation Department Recreation Supervisor, and Nidra Winger announced the Breakfast with Santa event to be held on December 13, 2003.

ITEM 2A. PUBLIC COMMENTS

Joe Edmiston, Santa Monica Mountains Conservancy, presented a plaque to the Council in appreciation of its participation in making the Ahmanson Ranch acquisition possible. Mayor Kearsley thanked the Board of Directors of the Santa Monica Mountains Conservancy.

Rich Davis, Vision 2020, distributed the agenda from the December 6, 2003 meeting, "Finding Common Ground for a Vision for Malibu." He indicated the results of the questions were being tabulated and would be provided to the Council. He read the letter he had prepared to the editor.

City Manager Lichtig reminded the Council that another workshop would be held on January 10, 2004, at Malibu High School Auditorium, at 9:00 a.m.

Norm Haynie distributed a proposed amendment to the City of Malibu's Local Coastal Program (LCP) regarding offers of alternative implementation measures that further the goals and objectives of the LUP.

Jim Smith addressed the Council regarding the application by Mr. Sweeney for a 10-foot wide road to be used to conduct geology studies. He discussed Mr. Sweeney's removal of brush and installation of fencing and water lines.

Sam Birenbaum discussed his recent eviction from his home. He stated there was no evidence of problems from his septic system. He urged the Council to direct the City Attorney to stipulate that, pending the appeal, they be allowed to continue to inhabit their home.

Dusty Peak discussed the male mountain lion at risk in the Santa Monica Mountains.

Pete Anthony, on behalf of the Point Dume Community Association, requested cell and utility boxes be installed underground. He asked if the request would require a Zone Text Amendment.

#### B. COUNCIL COMMENTS

City Attorney Hogin discussed the variance related to the Sweeney road. She indicated the trial was being held on December 15, 2003. She stated the road referred to by Mr. Smith was a 10-foot wide road to be used for geology testing. She stated she would discuss the matter with Senior Planner Albright.

Councilmember House discussed a dog grooming fundraiser to be held by Sherman Sherman to raise funds for a student trip to Washington D.C. She thanked Mr. Haynie for the information submitted regarding the LCP. She wished the community a happy holiday.

Councilmember Jennings discussed Mr. Haynie's submission and the need to come up with an alternative to the Transfer Development Credit Program in the LCP.

In response to Councilmember Jennings, Senior Planning Consultant Gorham discussed the recently adopted ordinance related to undergrounding of wireless facilities.

Councilmember Jennings stated the activity on the Sweeney property was within the jurisdiction of Los Angeles County. He discussed the recent permit granted for a government hunter to kill a mountain lion in the Santa Monica Mountains. He reminded residents of the hazardous waste disposal on December 13, 2003.

Mayor Kearsley announced Household Hazardous Waste Day on December 13, 2003, 9:00 a.m. to 3:00 p.m., Malibu Civic Center. He discussed the DVD's sent to the 101<sup>st</sup> Alpha Company. He encouraged residents to call 1-800-330-5090 to leave messages for the adopted soldiers. He announced the City's Holiday Open House on December 18, 2003, 4:00 p.m. to 6:00 p.m., in the Council Chambers at City Hall. He stated that he, Councilmember Stern and Mayor Pro Tem Barovsky attended the Fire Walk to raise money for fire victims.

Councilmember House announced that the City of Malibu Quarterly Newsletter was available.

ITEM 3        CONSENT CALENDAR

MOTION       Mayor Pro Tem Barovsky moved and Councilmember Stern seconded a motion to approve the Consent Calendar. The motion carried unanimously.

The Consent Calendar consisted of the following items:

A.        Previously Discussed Items

None.

B.        New Items

1.        Waive further reading

Staff recommendation: After the City Attorney has read the title, waive full reading of ordinances considered on this agenda for introduction on first reading and/or second reading and adoption.

2.        Approve Warrants

Staff recommendation: Allow and approve warrant demand numbers 23518 through 23629 listed on the register from the General Fund and direct the City Treasurer to pay out the funds to each of the claimants listed in Warrant Register No. 299 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands in a total amount of \$632,622.42. ADP payroll voucher numbers 6899996-6900013 were issued in the amount of \$104,363.03.

3.        Approval of Minutes

Staff recommendation: Approve City Council meeting minutes for the Regular City Council meeting held on October 27, 2003.

4.        April 13, 2004 General Municipal Election

Staff recommendation: 1) Adopt Resolution No. 03-63 calling and giving notice of the holding of a general municipal election to be held on Tuesday, April 13, 2004 for the election of certain officers as required by the provisions of the laws of the State of California relating to general law cities; and 2) adopt Resolution No. 03-64 requesting the Board of Supervisors of the County of Los Angeles to render specified services to the City relating to the conduct of a general municipal election to be held on Tuesday, April 13, 2004.

5. Certification of Canvass of the Vote for the Special Election of November 4, 2003  
Staff recommendation: Adopt Resolution No. 03-65, reciting the facts of the special municipal election held on November 4, 2003 and declaring the results and such other matters as provided by law.
6. City of Malibu Draft Local Coastal Program Tentative Schedule for Public Workshops/Hearings  
Staff recommendation: Approve the recommended schedule of public workshops and hearing.

#### ITEM 4 ORDINANCES AND PUBLIC HEARINGS

Item Nos. 4.A. and 4.B. were heard concurrently

- A. Appeal No. 03-016 - An Appeal of the Planning Commission's denial of Appeal No. 03-013 appealing the Interim Planning Manager's approval of Minor Conditional Use Permit No. 02-013 and Plot Plan Review No. 02-197 for the installation of a wireless telecommunication facility on an existing utility pole located within the public right-of-way adjacent to 28815 Bison Court in the Rural Residential (RR-1) Zone. Appellant: Ken Miller; Applicant: Sprint PCS, Owner: City of Malibu Public Right-of-Way; Location: Within the public right-of-way adjacent to 28815 Bison Court (Continued from November 10, 2003)  
Staff recommendation: Adopt Resolution No. 03-61 denying Appeal No. 03-016 and upholding the Interim Planning Manager's decision on the approval of Plot Plan Review No. 02-197 and Minor Conditional Use Permit No. 02-013.
- B. Appeal No. 03-014 – An Appeal of the Planning Commission's denial of Appeal No. 03-008 appealing the Interim Planning Manager's approval of Plot Plan Review No. 02-180 and Minor Conditional use Permit No. 02-009 for the installation of a wireless telecommunications facility on an existing utility pole located within the public right-of-way adjacent to 28840 Boniface Drive in the Rural Residential (RR-1) Zone. Appellant: Robert Carmichael; Applicant: Sprint PCS; Owner: City of Malibu Public Right-of-Way; Location: Within the public right-of-way adjacent to 28840 Boniface Drive (Continued from November 10, 2003)  
Staff recommendation: Adopt Resolution No. 03-62 denying Appeal No. 03-014 and upholding the Interim Planning Manager's decision on the approval of Plot Plan Review No. 02-180 and Minor Conditional Use Permit No. 02-009.

Senior Planning Consultant Gorham presented the staff reports.

In response to Councilmember Jennings, City Attorney Hogin indicated there was no pending litigation with Sprint.

Bob Carmichael, appellant, addressed the Council in opposition to the installation of Sprint's telecommunication facility due to appearance. He indicated he did not trust Sprint. He discussed health hazards related to wireless phones and radio frequency exposure. He suggested an environmental impact report (EIR) be prepared. He introduced Ken Miller, an attorney who lives on Bison Court.

In response to Councilmember Stern, Senior Planning Consultant Gorham explained the proposed equipment to be installed.

Ken Miller, appellant, discussed laws of the City regarding wireless telecommunication facilities. He stated Sprint argued that it had the right to install telecommunications facilities anywhere in the public right of way and took the position that they were exempt from the requirement of an environmental impact report. He read a portion of the case of *Sprint Spectrum v. Willoth*, 176 F. 3d 630, 639-640 (1999). He discussed the demographics of Bison Court. He stated the location proposed by Sprint was the least appropriate location in Malibu. He requested the appeal be granted. He discussed the need for California Environmental Quality Act (CEQA) review. He stated Sprint was proposing a project including 30 microcells, each with 2 antennae. He discussed the environmental impacts that would be caused by installation of the proposed facilities. He alleged a pre-existing Code violation on Bison Court based on Sprint's previous installation of a wireless telecommunications antenna without obtaining a conditional use permit.

Gregory W. Sanders, Sprint PCS, presented a report from the Heath Group regarding the two proposed Sprint facilities in the Point Dume area. He stated there was no Code violation. He explained that the facilities were proposed to service the entire neighborhood. He indicated Sprint was sensitive to the needs of its customers, as well as to local residents. He presented information to dispute the alleged health hazards. He stated 2/3 of the proposed facilities have already been built and were in operation. He stated Sprint had followed the City's wireless telecommunications ordinance and there was no basis for the appeal. He stated Sprint was sensitive to concerns regarding radio frequency emissions and offered to meet with concerned residents.

Councilmember Stern asked how many facilities were proposed for the Point Dume area. Mr. Sanders indicated five facilities in total. He stated three had already been approved and one was built. In response to Councilmember Stern, Mr. Sanders explained that an environmental review was not necessary. He asserted that a categorical exemption must be issued.

In response to Councilmember Jennings, Mr. Sanders stated it was necessary to make a distinction between facilities installed within and outside the public right of way. He explained that the jurisdiction had regulatory purview to determine time, place and manner of installation of those facilities within the public right of

way. He explained that Sprint had submitted itself to the City's requirements. Councilmember Jennings asked what happened to the cell site when undergrounding occurred. Mr. Sanders stated the CPC had not dealt with that issue. He explained that the antennae would not operate if placed underground. He stated some aboveground elements would be necessary to support antennae. Councilmember Jennings asked if there had been communities where undergrounding occurred and Sprint antennae had to be removed from poles. Mr. Sanders stated he was currently involved in such a case in Laguna Beach and Sprint had cooperated with the community to find alternative antenna locations. He explained that in some cases, a macrocell facility would cover the loss of microcell facilities.

Mayor Kearsley stated Mr. Miller could form a benefit assessment district and request undergrounding at which time an alternative would have to be found.

Councilmember House discussed Mr. Miller's comments that Sprint facilities did not locate near schools. Mr. Sanders stated the Los Angeles Unified School District had refused to rent facilities to wireless companies. He stated there were other school districts that encouraged cell site location due to potential revenue. Councilmember House asked if Sprint could escape liability if health hazards were discovered. Mr. Sanders stated he did not know of any statute that would protect Sprint from liability. He stated Sprint was not attempting to shield itself from liability from radio frequency emissions, rather it provides uniform regulation. Councilmember House stated the existing facilities did not look camouflaged. Mr. Sanders indicated the color of the pole could be beige. Councilmember House suggested the neighbors be consulted. Mr. Sanders stated Sprint did not have an issue with colors and they could be changed. He stated Sprint had scoured the area for alternatives. Councilmember House asked if there were other carriers on the Point. Senior Planning Consultant Gorham stated Sprint was the only carrier with facilities in Point Dume. Councilmember House asked if Sprint would permit other carriers to use their poles. Mr. Sanders explained regulations to co-locating antennae.

Mayor Kearsley asked if the microcell box could be undergrounded. Mr. Sanders stated the box could be undergrounded.

Councilmember Stern asked where on Point Dume the facilities could be located if the appeal were upheld.

Pamela Conley Ulich stated she did not know the environmental impact of cell phones. She indicated opposition to the proposed facilities due to safety issues. She urged the preparation of an environmental impact report. She accepted the opportunity to meet with Sprint to discuss radio frequency emission.



Dusty Peak suggested the City reimburse Mr. Miller and Mr. Carmichael for the cost of appeal. He discussed undergrounding of equipment.

Ryan Embree reminded the Council that Sprint would be pushing to sell wireless data in competition with existing providers. He stated a major road improvement project could require modification of facilities, such as undergrounding.

Mr. Carmichael discussed personal acquaintances of his who had used cell phones often and got brain tumors. He discussed peer-reviewed research done on radio frequency radiation from cell phones. He stated he had tested reception, stopping every mile, and coverage was adequate.

Mr. Miller testified that Verizon provides absolute, complete coverage in the area proposed by Sprint. He stated Sprint violated M.M.C. Chapter 17.66. He stated Federal law had to be addressed by looking at whether coverage could be obtained from any carrier. He read from the case *Metropics* as cited by Sprint. He read from the ruling in *Cellular Telephone Company v. Ho-Ho-Kus*, 197 F. 3d 64, 70 n.2. He urged the Council to deny Sprint's request.

In response to Councilmember Stern, City Attorney Hogin explained cases relating to gap in coverage issues. She explained the trigger for an environmental impact report. She stated there were currently 14 facilities being replaced by the 5 microcell facilities proposed by Sprint. She stated the aesthetic benefit would be a dramatic reduction.

In response to Councilmember Stern, City Attorney Hogin discussed case law regarding gaps in coverage.

In response to Mayor Pro Tem Barovsky, Senior Planning Consultant Gorham discussed 14 existing facilities which would be removed.

Councilmember Jennings asked what the CMI antennae looked like. Senior Planning Consultant Gorham explained the existing equipment to be removed. In response to Councilmember Jennings, City Attorney Hogin stated an EIR was conducted when there was evidence to support a fair argument of significant environmental impact. Councilmember Jennings stated there was no opportunity for a portion of the community to opt out of cell service.

Councilmember House asked if a condition could be added requiring reconsideration of the matter if information on health hazards became available. City Attorney Hogin stated there was nothing the Council could condition regarding potential health hazards. Councilmember House suggested the area consider undergrounding, which would do away with poles. She expressed concern regarding the lack of information on the effects of cell phone use. She stated the proposal would reduce the number of boxes from 14 to 5 and the

frequency range complied with the law. She expressed interest in Mr. Embree's comment regarding alternate agendas. She stated she did not see how she could grant the appeal.

Mayor Pro Tem Barovsky stated she watched the Planning Commission's hearing on the variance and if she were to vote to grant the appeal, it would be based on health issues. She stated that was not within the City's purview. She requested a condition requiring anything that can go underground be put underground.

Councilmember Jennings explained that the City had discretion on the visual appearance of facilities. He discussed M.M.C. Section 17.04.120, which was no longer in effect. He stated he would not want a cellular facility in front of his house. He discussed his involvement in fighting against a facility at the high school due to health concerns. He stated it was not possible to prove that something was absolutely safe but there was a lot of data and anecdotal information that created legitimate concern. He stated Congress had explicitly precluded the City from making a decision based on health concerns and visual impacts had been reduced, therefore he could not find basis to uphold the appeal.

Mayor Kearsley discussed radio frequency output. He stated the effects were inconclusive and he would rather err on the side of safety. He stated the Council was precluded from the finding for health issues but he could make a finding for the environment. He stated he would vote to uphold the appeal.

MOTION Mayor Pro Tem Barovsky moved and Councilmember House seconded a motion to adopt Resolution No. 03-62 and Resolution No. 03-61, amending Section 3, Condition 7 to read as follows: "No ground-mounted equipment shall be allowed as part of this facility, with the exception of the Radio Frequency Unit (RFU), which shall be located in an underground vault adjacent to the utility pole." The motion carried 3-2, Mayor Kearsley and Councilmember Stern dissenting.

ITEM 5 OLD BUSINESS

None.

ITEM 6 NEW BUSINESS

None.

ITEM 7 COUNCIL ITEMS

A. Council Appointments to City Commissions and Committees

Staff recommendation: Appoint new Commission and Committee members to various City Commission and Committees

Mayor Pro Tem Barovsky appointed Sherman Baylan to the Trails Master Plan Advisory Committee.

Councilmember House deferred her appointment to the Public Works Commission.

Mayor Kearsley deferred his appointment to the Public Safety Commission.

B. City Filming Procedures

Mayor Kearsley is requesting the Council add an item to a future agenda to discuss, and possibly revise, the City's Filming Procedures. If the Council agrees, the item will be brought to the Council in January.

Mayor Kearsley requested adding an item to a future agenda to discuss revision of the City's filming procedures. He discussed a problem on Bonsall regarding music associated with filming. He stated signatures were not required to play amplified music after dark. He suggested the procedures be modified to allow the neighbors to approve or disapprove playing of music at night.

Councilmember Jennings suggested discussing the matter at the next Quarterly City Council meeting.

Councilmember House suggested Mayor Kearsley work out changes with the City's Film Office and neighbors prior to meeting.

CONSENSUS

By consensus, the Council directed staff to bring back an item on the City's filming procedures at the next Quarterly City Council meeting, including a report from the City's Film Office on the recent incident regarding amplified music and informing the Council as to whether or not a film permit overrides the City's noise ordinance.

C. Consideration of Presentation of City Tiles (Councilmember House)

Staff recommendation: Consider whether or not to present City tiles to Alan Carson and Pat Greenwood.

Councilmember House stated she would like to present tiles to Alan Carson and Pat Greenwood for their service to the City.

CONSENSUS

By consensus, the Council directed staff to schedule presentation of City tiles to Alan Carson and Pat Greenwood in recognition of their years of exemplary service to the community. POST HOC NOTE: Pat Greenwood was presented with a City tile on December 10, 2001 for 10 years of volunteer service to the City of Malibu, therefore no additional tile will be presented.

ADJOURN At 9:12 p.m., Mayor Pro Tem Barovsky moved and Councilmember Stern seconded a motion to adjourn. The motion carried unanimously.

Approved and adopted by the City Council of the City of Malibu  
on January 12, 2004.

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KENNETH KEARSLEY, Mayor

ATTEST:

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LISA POPE, City Clerk  
(seal)